IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

L.P.A No. 81 of 2007

Date of decision : March 28, 2007.

Lachhman,

.....Appellant

through Mr.Vikas Bahl, Advocate

v.

The Joint Director, Panchayats, Punjab & others,

.....Respondents

CORAM : HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE
HON'BLE MR.JUSTICE RAJIVE BHALLA

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1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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RAJIVE BHALLA,J

By way of this Letters Patent Appeal, the appellant impugns the judgment of the learned Single Judge, dated 12.2.2007.

The facts that have led to the filing of the present appeal may be noticed in brief.

The respondent-Gram Panchayat of village Khawaspur filed an application, under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short herein after referred to as "the Act"), alleging that the appellant was in an unauthorised occupation of the land in dispute and should, therefore, be ejected therefrom. In opposition to the said application, the appellant contended that the property in dispute vested in the Custodian/Punjab Government and the entries to the contrary in the

jamabandi were wrong and not binding. It was further asserted that the appellant was in possession since Rabi 1976 and had been paying rent to the Tehsildar Sales. He had constructed a pucca Kotha, room etc and, therefore, could not be evicted.

After recording of evidence, the District Development and Panchayat Officer-cum-Collector held that though the jamabandi for the year 1977-78 reflects the name of the Panchayat in the ownership column, but as the jamabandi for the year 1960-61, described the land as Shamlat Patti Khawaspur, Hasab Rasad Khewat, the land was evacuee property and did not vest in the Gram Panchayat. It was also held that merely because ownership had been altered to the name of the Panchayat, the said land did not vest in the Gram Panchayat. The learned Collector specifically made a pointed reference to the fact that the question whether shamlat land, left behind by Muslims, vests in the Gram Panchayat or the Rehabilitation Department, was pending adjudication before the Hon'ble Supreme Court.

Despite noticing the aforementioned facts, the learned Collector proceeded to hold that the land in dispute was evacuee property and as it had never come into the possession of the Gram Panchayat, the application, under Section 7 of the Act, was not maintainable and consequently, dismissed the application, vide order dated 19.5.1980.

Aggrieved by the aforementioned order, the Gram Panchayat preferred an appeal, before the Joint Director of Panchayat, Punjab, exercising the powers of the Commissioner. The learned Commissioner reversed the order of the Collector and held that as the Hon'ble Supreme Court in Gram Panchayat of village Jamalpur v. Malwinder Singh, AIR 1985 SC 1394, held that share in shamlat, left behind by Muslims, who had

migrated to Pakishan, would vest in the Gram Panchayat and not the custodian evacuee property or in the Rehabilitation Department. Placing reliance upon the jamabandi that reflected the Gram Panchayat as the owner of the land in dispute, the order, passed by the learned Collector was set aside, the application, filed under Section 7 of the Act, filed by the Gram Panchayat was accepted and the appellant, ordered to be ejected from the land in dispute.

The appellant filed a writ petition before this Court. Vide the impugned judgment, the learned Single Judge held that the Gram Panchayat was recorded as owner, whereas the appellant came into occupation from 1976 Rabi as Gair Marusi Tehat Araazi Maturka. It was further held that the law, as interpreted by the Hon'ble Supreme Court, in Gram Panchayat of Village Jamalpur's case (supra), was fully applicable to the case and consequently the writ petition was dismissed.

Counsel for the appellant contends that Section 2(g)(3) of the Act postulates that land described in the revenue record as “Shamlat Patti” would be “Shamlat Deh” only if, as per the revenue record, the said land has been put to use for common purposes of the village. In the present case, the jamabandi for the year 1960-61 recorded the land in dispute as Shamlat Patti. However, as the other columns of the jamabandi did not record that the land had been put to use for any common purposes, it did not vest in the Gram Panchayat. It is further argued that as the Gram Panchayat was not the owner of the land in dispute, the application, under Section 7 of the Act was not maintainable.

It is further contended that the jamabandi for the year 1960-61, correctness whereof has not been denied by the Gram Panchayat, discloses

that the land in dispute was the ownership of Muslim migrants and, therefore, it could not vest in the Gram Panchayat. Mere entry of the Gram Panchayat's name, pursuant to certain executive instructions, would not confer ownership upon the Gram Panchayat. The Gram Panchayat was required to adduce evidence to prima facie establish its ownership and as the Gram Panchayat failed to do so, the learned Collector rightly dismissed the application, under Section 7 of the Act.

It is also contended that as the land in dispute is Gram Panchayat Deh and not Shamlat Deh, it does not partake the character of shamlat deh and, therefore, an application, under Section 7 of the Act, was not maintainable.

In support of the above contentions, counsel for the appellant has placed reliance upon Amar Singh etc v. Gram Panchayat Mundhal Khurd, 1979 PLJ 318, Joginder Singh and others vs. The Director, Consolidation of Holdings Punjab and others, 1988 PLJ 535, Om Parkash vs. The Assistant Collector Ist Grade, Narnaul 1992(2) RLR 197, and Gurjant Singh v. Commissioner, Ferozepur Division, 2000(2) PLR 347.

We have heard learned counsel for the petitioner and perused the paper book.

This appeal is the last throw of the dice of an unauthorised occupant, who has successfully perpetuated his illegal possession since the year 1976.

Admittedly, the Gram Panchayat filed an application, under Section 7 of the Act. The said application was filed, to retrieve land in the appellant's unauthorised occupation. The land in dispute is recorded in the jamabandi as the ownership of the Gram Panchayat. It is not denied that in

the jamabandi, immediately preceding the appellant's occupation of the land in dispute, the Gram Panchayat is reflected as the owner. It is not denied that the appellant, who seeks to impugn the title of the Gram Panchayat, did not, at any stage of the proceedings, file an application, under Section 11 of the Act, seeking adjudication of a question of title. His failure to do so is not without reason. The Jamabandi for the year 1960-61 records ownership of the land as "Shamlat Patti Khawaspur Hasab Rasad Khewat", namely, a Patti owned by Muslims, who migrated to Pakistan in 1947. A dispute arose between Gram Panchayats, and the Rehabilitation Department as regards the ownership of share in shamlat land, held by Muslim migrants. The Rehabilitation Department claimed that the share of Muslim migrants, in shamlat land, would be evacuee property and would, therefore, vest in the Rehabilitation Department, whereas the Gram Panchayats contended that as these lands had been reserved for common purposes, they would vest in the Gram Panchayat. This controversy was settled by the Hon'ble Supreme Court in Gram Panchayat of Village Jamalpur's case (supra), wherein it was held that the share of Muslim migrants in shamlat land would vest in the respective Gram Panchayats and the Evacuee Department would have no right, title or interest therein. The question of title, having been settled, the appellant, who claims to be a tenant of the Rehabilitation Department, had no right in law to challenge the ownership of the Gram Panchayat. Consequently, the appellant had no locus standi to contend and, therefore, the learned Collector had no jurisdiction to hold that the Gram Panchayat was not the owner of the land in dispute.

The contention, raised by counsel for the appellant, that as in

the year 1960-61, the land in dispute was described as Shamlat Patti Khawaspur Hasab Rasad Khewat and as the revenue record did not reflect that the land was put to any common use, the said land would not vest in the Gram Panchayat, cannot be accepted. The Hon'ble Supreme Court in Gram Panchayat of Village Jamalpur's case (supra), has held that the land, left behind by Muslim migrants, would vest in the Gram Panchayat. The Gram Panchayat would, thus, become owner of any share, left behind by Muslim migrants and no other person, much less the appellant's lessor i.e the Rehabilitation Department, or the appellant, would have any right in law to impugn the correctness of the Gram Panchayat's title.

The judgments, cited by counsel for the appellant, have no applicability to the present controversy. There can be no quarrel with the enunciation of law in Amar Singh etc's case (supra), that as per Section 2 (g)(3) of the Act, land referred to as Shamlat Patti, would vest in the Gram Panchayat, only if the revenue record shows that the land was used for common purposes. However, the said judgment does not advance the appellant's case, in any manner. The land in Amar Singh etc's case (supra) was not owned by Muslim migrants. Joginder Singh and others' case (supra), is also inapplicable for the same reasons.

It would also be necessary to mention here that the appellant does not claim ownership of the land in dispute but seeks to assert a possessory title under the Rehabilitation Department which, as noticed herein before, has been divested of any right, title or interest in the property on account of the judgment in Gram Panchayat of Village Jamalpur's case (supra).

In Om Parkash's case (supra), it was held that remedy, under

Section 7 of the Act, would only be available, if the land, was reflected as Panchayat Deh, and where land is described as Gram Panchayat Deh, the remedy would be under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act. The aforementioned argument suffers from an inherent flaw. As noticed herein above, and as held by the Hon'ble Supreme Court in Gram Panchayat of Village Jamalpur's case (supra), share in shamlat, whatever its nature, left behind by Muslim migrants, would vest in the Gram Panchayat and whatever the nomenclature assigned to it in the jamabandi would, by necessary implication, be shamlat deh, as defined in Section 2(g) of the Act.

In Gurjant Singh's case (supra), the controversy was whether Bachat land found surplus during consolidation vests with the Gram Panchayat or continues to be owned by the proprietors of the village. With due deference to counsel for the appellant, the said judgment has no relevance to the present controversy.

The judgment, passed by the learned Single Judge, does not suffer from any error of law and, therefore, does not require any interference. Consequently, the present appeal is dismissed.

(RAJIVE BHALLA)
JUDGE

March 28, 2007. **(VIJENDER JAIN)**
'kk' **CHIEF JUSTICE**